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10/500,179

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Perry L Johnson

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EXAMINER

SANTIAGO, LUIS F

ART UNIT

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3624

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/500,179	Applicant(s) JOHNSON, PERRY L	
	Examiner LUIS SANTIAGO	Art Unit 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 16 is/are pending in the application.
- 4a) Of the above claim(s) None is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 - 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to applicant's communication on 12/08/2004, wherein claims 1- 16 are currently pending.

Priority

2. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

- a. Claims 1- 16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding Claims 1 - 16, Claims 1 - 16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent, a method/process claim must (1) be tied to another statutory class of invention (such as a particular apparatus) (see at least *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972)).

A method/process claim that fails to meet one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter.

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Here claims 1 - 16 fail to meet the above requirements because they are not tied to another statutory class of invention.

Nominal recitations of structure in an otherwise ineligible method fail to make the method a statutory process. See *Benson*, 409 U.S. at 71-72. As *Comiskey* recognized, "the mere use of the machine to collect data necessary for application of the mental process may not make the claim patentable subject matter." *Comiskey*, 499 F.3d at 1380 (citing *In re Grams*, 888 F.2d 835, 839-40 (Fed. Cir.1989)). Incidental physical limitations, such as data gathering, field of use limitations, and post-solution activity are not enough to convert an abstract idea into a statutory process. In other words, nominal or token recitations of structure in a method claim do not convert an otherwise ineligible claim into an eligible one.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1– 7 are rejected under 35 U.S.C. 103(a) as being obvious over Aycock et al. (US 5,765,138) and further in view of Weber et al. (US 2002/0138377) (Hereinafter referred to as Weber).

6. With respect to **claims 1**:

7. Aycock, disclose a method for assuring compliance of a quality standards registrar with governmental or quasi-governmental accrediting agencies, the method comprising:

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b. obtaining client information including at least an industry code identifying a type of industry of a product or service provided by a client, a type of quality audit, and a number of employees (Aycock Col. 3, line 65, “The system may also include a supplier interface enabling a supplier to send and receive information to the supplier evaluation system”) (Aycock Col. 2, line 60, “The present invention provides a method and apparatus for evaluating supplier capabilities to qualify a supplier as a vendor for a project”) (Aycock Col. 4, line 30, “The access routine selectively accesses the local specification files and the communication software to provide information to a user operating the word processing system based on user requests for information”)

i. Aycock disclose the above limitation, but does not disclose a number of employees.

(1) However, Weber discloses a number of employees (Weber, paragraph 0032, “the user identification field 122 is preferably limited to a specific number of characters that may be utilized to identify a user, such as an employee or a manager”).

(2) Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention to have modified the system of Aycock to have incorporated a number of employees as taught by Weber, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary

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skill in the art would have recognized that the results of the combinations were predictable;

- c. determining auditor staffing requirements based on the client information (Aycock Col. 3, line 45, “The system comprises a first database storing a plurality of existing standards for use in formulating a set of requirements for a project, a vendor database storing existing vendor performance reports, historical vendor performance reports and prior on-site audit reports”);
- d. preparing a formal quotation at a central location for an audit based on the client information and the staffing requirements (Aycock Col. 1, line 45, “Vendor qualification typically involves the process of a purchasing agent identifying a set of technical requirements that need to be met, compiling the technical requirements into a request for proposal or a request for quotation”);
- e. storing formal quotation information in a database for tracking existing and prospective clients (Aycock Col. 9, line 40, “The supplier evaluation system 60 also comprises a vendor database 64 that stores existing vendor performance reports, historical vendor performance reports, any prior on-site audit reports”)
- f. reviewing and approving the formal quotation at the central location (Aycock Col. 7, line 50, “if it is determined in step 26 that the supplier meets the minimum maturity level, then an interim decision is made in step 32 whether to automatically approve the supplier”). (Aycock Col. 8, line 25, “The on-site audit includes validating the supplier responses, either by performing actual tests on hardware equipment or software systems, and/or by reviewing the quality control procedures”); and

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- g. forwarding the approved formal audit quotation to a salesperson for delivery to the client. (Aycock Col. 7, line 50, “an excellent historical vendor performance to suggest that the supplier responses are accurate and that the supplier would be a high-quality reliable vendor, then the supplier may be automatically approved as a vendor”).
8. With respect to **claims 2**:
9. Aycock, disclose the method of claim 1 further comprising scheduling a quality audit based on the staffing requirements of the formal quotation. (Aycock Col. 8, line 20, “After the quality maturity requirements have been selected in step 42, a physical audit at the supplier site is conducted in step 44; quality control engineers, production engineers, and production control managers responsible for production scheduling”).
10. With respect to **claims 3**:
11. Aycock, disclose the method of claim 1 wherein the step of determining auditor staffing requirements comprises-determining auditor staffing requirements based on the number of employees. (Aycock Col. 8, line 20, “After the quality maturity requirements have been selected in step 42, a physical audit at the supplier site is conducted in step 44. The on-site audit, also referred to as a supplier site evaluation, is typically performed by the purchasing agent and/or employees/consultants of the buying entity specialized in relevant fields”).
12. With respect to **claims 4**:
13. Aycock, disclose the method of claim 3 wherein the step of determining auditor staffing requirements further comprises determining a number of auditor person-days

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required using a table indexed by the number of employees. (Aycock Col. 11, line 50, “on-site audit reports to generate an audit schedule for use during the on-site audit at the supplier site”).

14. With respect to **claims 5**:

15. Aycock, disclose the method of claim 4 wherein the number of auditor person-days is determined by the standards registrar based on guidelines established by the accrediting agencies. (Aycock Col. 17, line 35, “A system as recited in claim 13, wherein said processing means generates an audit schedule in accordance with said supplier responses, said on-site evaluation being executed in accordance with said audit schedule”).

16. With respect to **claims 6**:

17. Aycock disclose the above limitation, but does not disclose the adjusting the auditor staffing requirements based on predetermined criteria.

h. However, Weber disclose the method of claim 1 wherein the auditor staffing requirements are determined using a table of auditor person-days based on the number of employees, the method further comprising:

ii. adjusting the auditor staffing requirements based on predetermined criteria. (Weber, paragraph 0046, "The auditing system 102 (FIG. 1) provides a manner for utilizing the queries to efficiently audit employees, and for easily presenting results of audits”).

i. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention to have modified the system of Aycock to have incorporated adjusting the auditor staffing requirements based on predetermined criteria as taught

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by Weber, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combinations were predictable.

18. With respect to **claims 7**:

19. Aycock disclose the method of claim 6 wherein the predetermined criteria include prior knowledge of the client based on registration for a different standard, processes performed by the client involve a single, general activity, the client is not responsible for designing products, the client provides a no-risk or low-risk product or service, or the client site is small with respect to the number of employees for similar clients. (Aycock Col. 1, line 65, “product will be supplied more reliably in terms of product performance and volume production, thereby resulting in less risk on the part of the buying entity from the standpoint of production control, project scheduling”) .

j. Aycock disclose the above limitation, but does not disclose on registration for a different standard,

iii. However, Weber disclose another registration (Weber, paragraph 0041, “The employee table 160 comprises an employee name field 162 for identifying the name of the employee that is subject to being audited via use of the auditing system 102 (FIG. 1”).

iv. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention to have modified the system of Aycock to have incorporated on registration for a different standard as taught by Weber, since

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the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combinations were predictable.

20. Claims 8– 16 are rejected under 35 U.S.C. 103(a) as being obvious over Aycock et al. (US 5,765,138) in view of Weber et al. (US 2002/0138377) and further in view of McFarland (US 6,154,753) (Hereinafter referred to as McFarland).

21. With respect to **claims 8**:

22. Aycock disclose the above limitation, but does not disclose the method of claim 7 further comprising limiting any adjustments to the auditor staffing requirements to thirty percent of the person-days based on the number of employees.

k. However, McFarland disclose the method of claim 7 further comprising limiting any adjustments to the auditor staffing requirements to thirty percent of the person-days based on the number of employees. (McFarland, Col. 24, line 10, “The audit planning database offers the ability to design and store checklists for various audits, manage internal audit findings, log observations, and automatically manage the internal audit schedule”).

l. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention to have modified the system of Aycock to have incorporated disclose the method of claim 7 further comprising limiting any adjustments to the auditor staffing requirements to thirty percent of the person-days based on the number of employees as taught by McFarland, since the claimed invention is merely a

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combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combinations were predictable.

23. With respect to **claims 9**:

24. Aycock disclose the above limitation, but does not disclose the method of claim 1 wherein the industry code comprises the Standard Industrial Classification (SIC) code established by the United States Department of Commerce.

m. However, McFarland disclose the method of claim 1 wherein the industry code comprises the Standard Industrial Classification (SIC) code established by the United States Department of Commerce. (McFarland, Col. 2, line 5, "The International Organization for Standardization (ISO) based in Geneva, Switzerland which has published international standards for quality management known as "ISO 9000" is the world leader for developing standards").

n. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention to have modified the system of Aycock to have incorporated the method of claim 1 wherein the industry code comprises the Standard Industrial Classification (SIC) code established by the United States Department of Commerce as taught by McFarland, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combinations were predictable.

25. With respect to **claims 10**:

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26. Aycock disclose the method of claim 1 wherein the type of audit is selected from an environmental audit, a quality system audit, a pre-assessment audit, an initial registration audit, a registration upgrade audit, and a surveillance audit. (Aycock Col. 3, line 10, “The supplier maturity level refers to the supplier's sophistication and capabilities in establishing and maintaining quality standards in the design, production, distribution, serviceability, and reliability of the supplier's product or service”). (Aycock Col. 10, line 5, “while the vendor database 64 evaluates performance and quality maturity from the perspective of the vendor generally, the product database 66 enables specific evaluation of products supplied by existing and prior vendors”).

27. With respect to **claims 11**:

28. Aycock disclose the above limitation, but does not disclose the method of claim 1 wherein the industry code includes a hierarchical classification system having major and minor classifications.

o. However, Weber disclose the method of claim 1 wherein the industry code includes a hierarchical classification system having major and minor classifications. (Weber paragraph 0033, “The security setting table 120 also comprises a security level field 126. The security level field 126 is utilized to store different security levels that are to be assigned to users of the auditing system 102 (FIG. 1”).

p. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention to have modified the system of Aycock to have incorporated the method of claim 1 wherein the industry code includes a hierarchical classification system having major and minor classifications as taught by Weber, since the claimed

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invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combinations were predictable.

29. With respect to **claims 12**:

30. Aycock disclose the above limitation, but does not disclose the method of claim 11 further comprising assigning auditors based on the industry code.

q. However, Weber discloses the method of claim 11 further comprising assigning auditors based on the industry code. (Weber, paragraph 0010, “requesting the user of the system to provide a job code for each of the selected employed entities to further define the queries that may be selected for auditing each of the selected employed entities”).

r. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention to have modified the system of Aycock to have incorporated the method of claim 11 further comprising assigning auditors based on the industry code as taught by Weber, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combinations were predictable.

31. With respect to **claims 13**:

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32. Aycock disclose the above limitation, but does not disclose the method of claim 11 further comprising selecting an auditor from a list of auditors qualified to audit a particular industry based on the major classification of the industry code.

s. However, McFarland disclose the method of claim 11 further comprising selecting an auditor from a list of auditors qualified to audit a particular industry based on the major classification of the industry code. McFarland, Fig. 62 “Available Internal Auditors”, “Audit Schedule”; Fig. 66 “Internal Auditor Eligibility”. (McFarland Col. 25, line 5, “Internal Auditor Eligibility forms are available from the “Compose” drop-down menu of the form. This form offers the ability to manage the internal auditor roster by functional area to ensure independence of responsibility for processes being audited”).

t. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention to have modified the system of Aycock to have incorporated the method of claim 11 further comprising selecting an auditor from a list of auditors qualified to audit a particular industry based on the major classification of the industry code as taught by McFarland, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combinations were predictable.

33. With respect to **claims 14**:

34. Aycock disclose the above limitation, but does not disclose the method of claim 11 further comprising: selecting an auditor based on the industry code wherein the auditor must

be qualified based on the major classification and at least a portion of the minor classification for predetermined high-risk classifications.

u. However, McFarland disclose the method of claim 11 further comprising: selecting an auditor based on the industry code wherein the auditor must be qualified based on the major classification and at least a portion of the minor classification for predetermined high-risk classifications. (McFarland Col. 26, line 20, “to determine whether the auditor has attended an ISO awareness seminar, had experience as an internal auditor for an ISO 9000 system, or attended classes and passed an examination to be qualified as an ISO 9000 lead assessor.

v. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention to have modified the system of Aycock to have incorporated the method of claim 11 further comprising: selecting an auditor based on the industry code wherein the auditor must be qualified based on the major classification and at least a portion of the minor classification for predetermined high-risk classifications as taught by McFarland, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combinations were predictable.

35. With respect to **claims 15**:

36. Aycock disclose the above limitation, but does not disclose the method of claim 11 further comprising: selecting an expert with work experience in an industry having the industry code to accompany an auditor when a qualified auditor is unavailable.

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w. However, McFarland disclose the method of claim 11 further comprising: selecting an expert with work experience in an industry having the industry code to accompany an auditor when a qualified auditor is unavailable. (McFarland Col. 30, line 10, “The user is presented with a listing of all skill sets available (gained both through on the job training and formal instruction) and the employees with expertise in that specific discipline. This enables the formation of cross-functional teams with the requisite expertise to get the job done”).

x. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention to have modified the system of Aycock to have incorporated the method of claim 11 further comprising: selecting an expert with work experience in an industry having the industry code to accompany an auditor when a qualified auditor is unavailable as taught by McFarland, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combinations were predictable.

37. With respect to **claims 16**:

38. Aycock disclose the above limitation, but does not disclose the method of claim 11 further comprising: forwarding an audit package to the central location; reviewing the audit package for completeness, original signatures, auditor staffing time expended and auditor qualifications based on the industry code and issuing a registration certificate if the audit package is complete and conforms to an applicable standard.

y. However, McFarland disclose the method of claim 11 further comprising:

- v. forwarding an audit package to the central location (McFarland Col. 2, line 45, ““accordance with section 4.5 of the referenced publication, it is important to establish the company's internal guidelines detailing the rules for documentation, i.e., the drafting, management approval, verification, modification, and distribution of the documents””;
- vi. reviewing the audit package for completeness, original signatures, auditor staffing time expended and auditor qualifications based on the industry code (McFarland Col. 9, line 55, “The databases 110 and 112 automatically generate a Master List, automatically generate the list of documents requiring approval, provide automatic control of document revision and approval”) (McFarland Col. 10, line 5, “ It identifies qualified employees for special projects and process in accordance with the requirement of ISO clause 4.9 and provides objective evidence of such qualification”); and
- vii. issuing a registration certificate if the audit package is complete and conforms to an applicable standard. (McFarland Col. 11, line 35, “The fields provide for entering the security classification of the completed document, a reference number for the form, the title of the document, the level of revision within the activity, and the title of the document owner or owners within the business activity, all as is apparent from FIG. 12”).
- z. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention to have modified the system of Aycock to have incorporated the method of claim 11 further comprising: forwarding an audit package to the central

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location; reviewing the audit package for completeness, original signatures, auditor staffing time expended and auditor qualifications based on the industry code and issuing a registration certificate if the audit package is complete and conforms to an applicable standard as taught by McFarland, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combinations were predictable.

Conclusion

39. Any inquiry concerning this communication or earlier communications from the examiner should be directed Luis Santiago whose telephone number is (571) 270-5391. The examiner can normally be reached Monday to Friday from 7:30 to 5:00.

40. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley Bayat can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

41. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) System. Status Information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer service

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Representative or access to the automated information system, call 800-786-9199 (IN USA
OR CANADA) or (571) 272-1000.

/LFS/

May 9, 2009.

/Scott L Jarrett/

Primary Examiner, Art Unit 3624